

September 28, 2018

By ECF

The Honorable Debra Freeman
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Phoenix Light SF DAC et al. v. Deutsche Bank Nat. Trust Co., et al., 14-cv-10103-JGK-DF and
Commerzbank AG v. Deutsche Bank Nat'l Trust Co., et al., 15-cv-10031-JGK-DF

**Subject: Proposed Deadline for Supplemental Discovery and Request to Modify Briefing
Schedules and Word Limits for Phase I Dispositive Motions**

Dear Judge Freeman:

As requested at the September 21 discovery conference, the parties write concerning the resolution of various discovery disputes and to address certain issues regarding the upcoming Phase 1 dispositive motions. As the Court is aware, the parties have stipulated to a bifurcated schedule for expert discovery and dispositive motions, with “Phase 1” including expert discovery and dispositive motion practice concerning any issue other than loan-level re-underwriting and damages.¹

Background

There were originally five motions on the calendar in each action for the September 21 discovery conference:

- Non-party Deutsche Bank AG’s motions to quash Plaintiffs’ subpoenas, filed on April 13, 2018 (*Phoenix Light* ECF No. 217; *Commerzbank* ECF No. 105);
- Defendants’ motions to compel Plaintiffs to supplement their interrogatory responses, filed on June 15, 2018 (*Phoenix Light* ECF No. 226; *Commerzbank* ECF No. 112);
- Plaintiffs’ motions to compel Defendants to supplement their interrogatory responses and responses to requests for admission, filed on June 15, 2018 (*Phoenix Light* ECF No. 227; *Commerzbank* ECF No. 113);
- Plaintiffs’ motions to invalidate the Office of the Comptroller of Currency’s assertion of the bank examination privilege, and compel Defendants to produce certain documents, filed on July 30, 2018 (*Phoenix Light* ECF No. 239; *Commerzbank* ECF No. 125); and

¹ See *Phoenix Light* ECF No. 205; *Commerzbank* ECF No. 92.

- Plaintiffs' motions to strike certain expert rebuttal reports, and compel Defendants to supplement their responses to interrogatories, filed on August 24, 2018 (*Phoenix Light* ECF No. 242; *Commerzbank* ECF No. 128).

Before the discovery conference, the parties resolved, in whole or in part, all pending motions except for their respective motions to compel supplemental responses to written discovery. As part of the resolution, Defendants agreed to produce additional documents. At the conference, Your Honor ordered each party to supplement certain of their written discovery responses. Your Honor further directed the parties to submit a joint letter proposing deadlines for the additional productions and supplemental responses, and addressing certain issues regarding upcoming Phase 1 dispositive motions.

Proposal Concerning Deadlines and Summary Judgement Issues

The parties propose **October 26, 2018** as the deadline for Defendants to complete their additional productions and for the parties to supplement their discovery responses.

In addition, Defendants have requested an extension of the deadline for filing Phase 1 dispositive motions, which Plaintiffs do not oppose.

The parties respectfully request that the Court modify the briefing schedule for Phase 1 dispositive motions in both cases as follows:

Brief	Deadline²
Moving	December 7, 2018
Opposition	February 8, 2019
Reply	March 8, 2019

The parties also request that the Court set the following word limits for Phase 1 dispositive motions: (i) 14,000 words for moving briefs, (ii) 14,000 words for opposition briefs and (iii) 5,600 words for replies.³ Plaintiffs further request that if Plaintiffs or Defendants elect to file an omnibus dispositive motion covering both actions, the word limits for the omnibus briefs would be the same as the combined word limits for the two briefs, *i.e.*, (i) 28,000 words for moving briefs, (ii) 28,000 words for opposition briefs and (iii) 11,200 words for replies. Defendants do not oppose this request. The parties submit that the default word limits set forth in Judge Koeltl's individual rules (7,000 for principal briefs, 2,800 for replies)⁴ would not permit

² The current deadlines for Phase 1 moving briefs are: (i) November 2, 2018 (*Commerzbank*) and (ii) November 9, 2018 (*Phoenix Light*).

³ The cover page, certification of compliance, table of contents, and table of authorities will not count toward the word limit.

⁴ See Individual Rules of Practice of Judge John G. Koeltl, at 2.D.

the parties to address fully the complex legal and factual issues raised in these actions collectively involving 85 RMBS trusts.⁵

Respectfully submitted,

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⁵ The parties further note that Judge Koeltl granted the parties a 50-page limit for principal briefs and 20-page limit for reply briefs when Defendants moved to dismiss. *See Phoenix Light* ECF No. 23.